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(916) 445-3076

June 10, 1980

Mr. Mark Freed
Deputy County Counsel
County of Sonoma
2555 Mendocino Avenue
Santa Rosa, CA 95401

Dear Mr. Freed:

Pursuant to the May 6, 1980, Minute Order by the Board of Supervisors, you requested our comments on the situation wherein certain taxpayers are asking the Board of Supervisors to overturn actions of the Assessment Appeals Board.

As you point out in your memo to the Board, the Appeals Board is the body charged with the assessment equalization function and once the Board of Supervisors acts to establish such a board, the power to equalize assessments passes solely to the Assessment Appeals Board. This is constitutionally mandated in Section 16 of Article XIII of the State Constitution. This section states that either the Board of Supervisors or the Assessment Appeals Board "shall constitute the county board of equalization for a county". There is no provision in the Constitution or in Sections 1620 - 1630 of the Revenue and Taxation Code for the Board of Supervisors to assume any jurisdiction over an Appeals Board in its valuation function. Although I can find no case directly on this point, a similar ruling was made in Napa Savings Bank v. County of Napa, 17 Cal. App. 545, as to the distinction between the Board of Supervisors and the Board of Supervisors sitting as a local board of equalization.

The Board of Supervisors do enjoy certain powers over the Assessment Appeals Board as indicated in Sections 1625 and 1626 of the Revenue and Taxation Code, but there is no provision giving the Board power to any of the official acts of the Appeals Board. Furthermore, it is our opinion that there is no right of the Board of Supervisors to review any action of the Assessment Appeals Board if the application filed for the assessment appeal was also a claim for refund. When the taxpayer has the option of making his application a claim for refund and takes advantage of that option, the action of the Appeals Board also resolves the claim for refund. In this case the taxpayer's only recourse is to a court action.

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When the application for assessment appeal is not also a claim for refund and when there is a legal issue, such as the proper assessment practice under SS 17, the Board of Supervisors have a concurrent power to make refunds under Section 5096 of the Revenue and Taxation Code even after the valuation question has been resolved by the Appeals Board. In this situation, the Board has no review power but must make an independent determination of the issue. What this means is that the Board of Supervisors cannot merely review the record of the Assessment Appeals Board. It must be presented the evidence and arguments in a totally separate proceeding. In our response to Mr. Pisenti of the Irate Taxpayers' Committee, we assumed the facts presented were true for purposes of our response. However, we recognized at the time that we actually had no idea whether the statements were true or not. Thus, in this circumstance, the committee would have to present sufficient evidence to the Board under Section 5096 to convince the Board that the assessor was, in fact, engaging in illegal assessment practices.

Very truly yours,

Robert D. Milam
Tax Counsel

RDM:fr

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section